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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 IVAN ROMAN TIZOC,
15 Defendant.
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Case No.: 3:15-cr-01299-GPC
3:17-cv-01856-GPC

**ORDER GRANTING IN PART
DEFENDANT'S MOTION UNDER 28
U.S.C. § 2255**

[ECF No. 229]

17 On March 20, 2018, the Court issued an order denying Defendant Ivan Tizoc's
18 motion under 28 U.S.C. § 2255 in part, but deferring a ruling on his claim of ineffective
19 assistance of counsel. ECF No. 233.¹ Part of Defendant's ineffective assistance of
20 counsel argument was an assertion that his trial counsel refused to file a timely notice of
21 appeal despite Defendant's request that he do so. The Court instructed the Government
22 to indicate whether it objected to the Court vacating and re-entering the criminal
23 judgment so as to permit Tizoc to file a timely appeal. The Government filed a notice
24 indicating that it did not object to the Court doing so. ECF No. 234. As a result, the
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28 ¹ The Court's docket entry citations refer to Defendant's criminal docket, Case Number 15-cr-1299.

1 Court ordered that the criminal judgment be vacated and immediately re-entered. ECF
2 No. 235.

3 Though the judgment was re-entered, the Court failed to appoint Tizoc counsel to
4 file his appeal. Tizoc has not filed a direct appeal of the judgment. On October 11, 2018,
5 the Court ordered the United States to inform the Court whether it objects to the Court
6 vacating and re-entering the judgment for a second time to permit Tizoc to file a timely
7 appeal. ECF No. 242. The Government responded that it does not object. ECF No. 243.

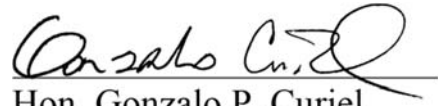
8 For the reasons explained in the Court’s earlier order, ECF No. 233, Defendant’s
9 § 2255 motion is DENIED except for his claim of ineffective assistance of counsel. With
10 respect to Defendant’s argument that his counsel was ineffective because counsel refused
11 to file a timely notice of appeal, the Court GRANTS the § 2255 motion, VACATES the
12 criminal judgment in this case, and re-enters an identical judgment. As the Court also
13 explained in its previous ruling, the Court will not address “the other IAC arguments
14 offered by Defendant in his [§ 2255] motion.” *Id.* at 14. Now that the Government has
15 declined to object to the Court re-entering judgment to permit Defendant to file a timely
16 direct appeal, “Defendant may raise those [other IAC] grounds on his direct appeal,” and
17 “if they are rejected, he may raise them in a timely and appropriate § 2255 motion
18 thereafter.” *Id.*

19 With respect to the portion of Defendant’s § 2255 motion that the Court has denied
20 on the merits - Defendant’s assertion that he did not knowingly and voluntarily waive his
21 rights to appeal and collateral attack, *see id.* at 10–12, - the Court concludes that
22 Defendant has not presented “a substantial showing of the denial of a constitutional
23 right.” 28 U.S.C. § 2253(c)(2); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
24 As a result, the Court declines to issue a certificate of appealability with respect to the
25 portion of the § 2255 motion that the Court has denied.

26 This criminal case is referred to Magistrate Judge Barbara L. Major for
27 appointment of counsel.

28 **IT IS SO ORDERED.**

1 Dated: October 12, 2018

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3 Hon. Gonzalo P. Curiel
4 United States District Judge
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